Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Regulatory Review of	)	WC Docket No. 06-157
Regulations Administered by the	)	
Wireline Competition Bureau	)	

COMMENTS OF VERIZON

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TABLE OF CONTENTS

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	)	
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I. Summary.

The Commission has held repeatedly that "broadband deployment is a critical policy objective that is necessary to ensure that consumers are able to fully reap the benefits of the information age"[2] and that "widespread deployment of broadband infrastructure has become the central communications policy objective of the day."[3] The Commission already has taken significant steps to achieve this goal by eliminating the application of a number of unnecessary regulations to next-generation broadband networks and facilities, as well as certain of the advanced services provided over these new networks.[4] But still other legacy regulations that were designed for a different era

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[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand, 18 FCC Rcd 16978, ¶ 241 (2003), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 543 U.S. 925 (2004)

[3] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities;* Notice of Proposed Rulemaking, 17 FCC Rcd 3019, ¶ 1 (2002) (footnote omitted).

[4] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*; Report and Order, 20 FCC Rcd 14853 (2005) ("*Title I Order*"); *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC*

continue to jeopardize the development and introduction of next generation IP-enabled "all distance" services, and to create complications and impose unnecessary costs on the design and deployment of the broadband infrastructure on which they are provided. The Commission should use this biennial review process to clean up the vestiges of monopoly era regulation that no longer make any sense in an era of advanced new technologies and services and that ultimately interfere with its goal of the widespread availability of next generation broadband networks and advanced services.

The communications marketplace has changed dramatically from what it was a decade ago when the 1996 Act was passed and, indeed, from what it was two years ago – the last time the Commission conducted a review of regulations required by that Act. Virtually all segments of the communications marketplace operate in fundamentally different ways today than they have at any point in the past. Once, consumers purchased local service from their local phone company and long distance service from one of a number of interexchange carriers. Today, consumers can choose among cable companies, wireless providers, VoIP providers, and others for the any distance, any time services they demand: bundles of "local" and "long distance" calling, buckets of minutes for one flat rate, together with popular features such as voice mail and call management capabilities.

Broadband access from a provider other than the incumbent local exchange carrier is available to more than 90 percent of Americans – giving them a wide array of competitive options for their "phone" service – and new technologies are being deployed

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Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c); Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004)

that can deliver a host of innovative, geography-agnostic services. These changes have rendered artificial regulatory distinctions between local and long distance services – as well as interstate and intrastate services – unsustainable anachronisms. Because of these fundamental market changes, it is long past time to eliminate any remaining regulatory regimes that regulate the rates or services of only one among many providers.

Yet Verizon and other providers that began life as local exchange carriers operate under regulations written decades ago that assumed a world of separate local and long distance providers – or even longer ago that assumed a world with a single dominant provider of telephone service. As a result, these providers waste time, money and effort trying to pigeon-hole today's advanced broadband services and facilities into regulatory categories designed for another era, and are forced to design inefficiencies into their services and networks. This slows innovation, increases costs, and thus harms consumers.

The Commission has long recognized that competition is the best form of "regulation." The Commission therefore should use this biennial review to bring its rules into alignment with what is already happening in the marketplace.

First, it should remove outmoded and artificial regulatory handicaps that no longer make sense in a world characterized by rapid deployment of advanced broadband technologies and geography-agnostic facilities and services by multiple competing providers over a variety of technology platforms. The Commission should eliminate the carry-over equal access and nondiscrimination obligations that apply to only one among several competing providers, including the obligation to read lists of competing long distance providers, preserved by section 251(g) of the Act. These regulations were

designed more than two decades ago to prevent what were then the BOCs and GTE from favoring AT&T after the break-up of the Bell System, and to ensure that consumers knew they had a choice of long distance providers. Those purposes have long since been fulfilled and these regulations are no longer necessary in the public interest. The Commission also should expressly decline to *re-regulate* the long distance and all-distance services offered by former Bell operating companies if they choose to offer these services in an efficient integrated basis now that the section 272 separate affiliate requirements have sunset under the schedule prescribed by Congress. These companies' long distance services are not subject to so-called "dominant" carrier regulations today, such as tariffing or price cap requirements. And there's no reasonable argument to be made in today's market environment that any provider of long distance or any distances services can be characterized as dominant. Indeed, in today's market, with the deployment of new technologies and consumer demand for the benefits they receive from any distance services and bundled offerings, the concept of separate local and long distance services is increasingly becoming an anachronism. In this environment, it would make no sense, and would be affirmatively anticompetitive, to force one among many competing providers to choose between rolling out new services and facilities in the most efficient manner, or being subject to increased regulations designed for a different era and marketplace. For the same reason, the Commission should eliminate the separation requirements that apply to the provision of long distance and all-distance service by independent LECs, but not other competitors. These regulations greatly complicate the design and planning of today's advanced services and facilities, and interfere with the ability of independent LECs to determine the most efficient structure for their business.

Second, the Commission should eliminate its *Computer III* requirements, including CEI and ONA requirements. Although the Commission eliminated the application of these rules to wireline broadband Internet access services and Verizon's other broadband transmission services, they remain in force for other services the BOCs provide today, and every new service must be evaluated to determine if it is subject to these rules. The Commission should eliminate these requirements altogether. The Commission's CEI and ONA rules do not apply to other local or long distance providers today, including the "all distance" offerings of cable and over-the-top VoIP providers. Subjecting only the BOCs' services to these burdensome requirements will stifle innovation and investment, skew competition, and harm consumers by slowing the development of new services and increasing the costs of offering them.

Finally, the Commission should reform other pricing regulations that impede competition and innovation. In today's robustly competitive marketplace, market forces will ensure that each provider's rates, terms, and conditions are reasonable and satisfy customer demand. The Commission therefore should begin now to remove remaining mandatory tariff obligations that apply only to one among many competing providers, and should permit carriers to file base-line tariffs from which commercial agreements can be negotiated, or to post price lists. For services sold to large business and government customers, the Commission should also eliminate the requirement that non-dominant carriers post rates, terms, and conditions for interstate, interexchange and international services. The Commission has recognized that negotiated, commercial solutions are superior to regulatory prescriptions, finding that "negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996

Act."[5] The Commission also should reform its TELRIC pricing regime for UNEs to eliminate the requirement that bases costs on a hypothetical network with efficiencies that no real-world carrier can match. These rules affirmatively *decrease* competition by undermining the investment incentives for all facilities-based competitors and, in particular, handicapping the ability of facilities-based wireline carriers to be vigorous competitors in the world of intermodal competition.

As the Commission recently acknowledged in its *Title I Order,* "one of the Commission's most critical functions is to adapt regulation to changing technology and competitive conditions to accomplish its mandates under the Act."[6] The Commission should use this biennial review to accomplish this function by eliminating the specified rules and requirements.

II. There is extensive and vigorous competition for both local and long distance services offered by BOCs and incumbent independent LECs.

Over the last decade, the telecommunications market has undergone a fundamental revolution. Where end users once bought local service from their local phone company and long distance service from one of a number of interexchange carriers, they now can choose among a variety of all distance services offered by a wide range of intermodal providers. Because consumers increasingly view wireless, cable telephony, and VoIP as viable alternatives to wireline service, wireline access lines are now falling by more than 5 percent annually.[7] Industry experts forecast that cable and

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[5] *Developing A Unified Intercarrier Compensation Regime*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, ¶ 14 (2005) ("*Unified Intercarrier Compensation Regime*").

[6] *Title I Order* at ¶ 42.

[7] *See, e.g.*, Simon Flannery, *et al.*, Morgan Stanley Research, *2Q06 Preview: Cautious Second Half Outlook in Prospect* at Exh. 15 (July 19, 2006).

VoIP will have more than 11 million subscribers by year end and that, by the end of 2010, 45 percent of U.S. households will either be wireless only or will use VoIP to make their calls.[8]

A. Cable

Cable companies began providing mass market voice telephone service over their networks using circuit switches and are now aggressively rolling out VoIP service to their customers in almost all their service territories. Cable companies are expected to offer telephony services (IP-based or circuit-switched) to approximately 84 percent of households by the end of this year, up from 32 percent at the end of 2004, and availability is expected to increase to more than 90 percent by the middle of 2007.[9]

In addition, there has been rapid growth in the number of cable telephony subscribers and that growth is accelerating. Collectively, cable companies are expected to serve more than 8.5 million lines by the end of 2006 and more than 13 million by year-end 2007.[10] For example, each of the four largest cable companies in Verizon's footprint has made substantial inroads in providing telephony service:

- *Time Warner*: Time Warner offers VoIP in all 31 of the markets it operated prior to its recent acquisition of systems from Adelphia and Comcast, passing a total of

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[8] *See* Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: VoIP Gathering Momentum, Expecting 20M Cable VoIP Subs by 2010* at Exhibit 8 (Jan. 17, 2006); Frank G. Louthan, IV, Raymond James & Associates, Inc., *Reassessing the Impact of Access on Wireline Carriers* at 2 (July 11, 2005).

[9] Craig Moffett, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: Six Million and Counting* at Exhibit 17 (June 12, 2006). *See also* John C. Hodulik, *et al.*, UBS, *Vonage Holding Corp.* at 10 (July 5, 2006) ("Cable telephony is available in roughly 70% of homes passed by cable infrastructure today. This is expected to grow to more than 90% of homes passed by mid-2007.").

[10] Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: Six Million and Counting* at Exhibit 18 (June 12, 2006).

more than 19 million homes.[11] Ninety percent of homes passed by Time Warner's network are voice-enabled.[12] Time Warner added 234,000 subscribers in the second quarter of 2006, its fifth consecutive quarter with more than 200,000 such adds.[13] Time Warner is now providing voice service to 9 percent of service-ready homes passed,[14] and in some markets, penetration is "in the mid- to high-20s, and actually as high as 35% . . . and [] still growing."[15] Time Warner claims to be "the 10th largest phone company in America."[16] The company serves more than 1.6 million voice subscribers, and is adding approximately 18,000 subscribers per week.[17]

- *Cablevision*: Cablevision now offers telephony service to all of the homes it passes, and is already providing service to more than 22 percent of those homes.[18] Cablevision recently announced that it has surpassed one million Optimum Voice customers, and noted that the service has already reached penetration of one-third of the company's cable customers and more than half of its high-speed Internet customers.[19] Analysts expect that Cablevision will be the voice provider for 27

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[11] *See* Thomson StreetEvents, *TWX—Q4 2004 Time Warner Inc. Earnings Conference Call*, Conference Call Transcript (Feb. 4, 2005) (statement of Time Warner Inc. CFO Wayne Pace); Time Warner, *Time Warner Cable Overview*, http://www.timewarner.com/corp/businesses/detail/time_warner_cable/index.html.

[12] *Q2 2006 Time Warner Inc. Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 080206az.780 (Aug. 2, 2006) (Time Warner Entertainment & Networks Group Chairman Jeff Bewkes). This does not include systems Time Warner recently acquired from Adelphia and Comcast.

[13] Time Warner Press Release, *Time Warner Inc. Reports Second Quarter 2006 Results* (Aug. 2, 2006).

[14] Time Warner Press Release, *Time Warner Inc. Reports Second Quarter 2006 Results* (Aug. 2, 2006).

[15] *Time Warner Cable's Executive Vice President & CFO John K. Martin, Jr. at Banc of America Securities Media, Telecommunications, & Entertainment Conference*, FD (Fair Disclosure) Wire, Transcript 033006ab.752 (Mar. 30, 2006) (statement by Time Warner Cable executive vice president and CFO John Martin).

[16] *Time Warner Inc. at Credit Suisse First Boston Media Week – Final*, FD (Fair Disclosure) Wire, Transcript 120805ae.718 (Dec. 8, 2005) (Time Warner Inc. Chairman and CEO Dick Parsons).

[17] Time Warner Press Release, *Time Warner Inc. Reports Second Quarter 2006 Results* (Aug. 2, 2006).

[18] Cablevision News Release, *Cablevision Completes Network Rebuild* (Dec. 3, 2003); Cablevision News Release, *Cablevision Systems Corporation Reports Second Quarter 2006 Selected Operating and Financial Measures* (Aug. 8, 2006).

[19] Cablevision News Release, *Cablevision's Optimum Voice Surpasses One Million Voice Customers* (July 18, 2006).

percent of the homes it passes by the end of 2006.[20] Cablevision is adding more than 9,000 voice customers per week.[21]

- *Comcast*: Comcast reported that it added 211,000 new Comcast Digital Voice customers in the first quarter of 2006 – more than the company added in all of 2005 – and 306,000 more customers in the second quarter.[22] Comcast expects to add more than one million new Digital Voice subscribers this year, with the goal of 20 percent penetration (eight million voice subscribers) by 2009.[23] Comcast now markets its phone service to 60 percent of its footprint nationwide, or 26 million homes.[24] Comcast plans to market its voice service to 80 percent of its footprint (more than 30 million homes) by the end of 2006.[25] Comcast is providing service to more than 1.7 million voice subscribers, and is adding more than 17,000 subscribers per week.[26]

- *Cox*: Cox recently announced that it would offer voice service in all the markets it serves by the end of 2006, and that its telephone penetration is nearly one-quarter of all homes passed by its network.[27] Cox already provides voice service to more than 1.8 million customers.[28]

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[20] *See* Craig Moffett, *et al.*, Bernstein Research, *Cable 2Q06 Preview: The Ideal Defensive? Raising Target Prices for Comcast and Cablevision* at Exhibit 46 (July 11, 2006).

[21] Cablevision News Release, *Cablevision Systems Corporation Reports Second Quarter 2006 Selected Operating and Financial Measures* (Aug. 8, 2006).

[22] Comcast Press Release, *Comcast Reports First Quarter 2006 Results* (Apr. 27, 2006); Comcast Press Release, *Comcast Reports Second Quarter 2006 Results* (July 27, 2006).

[23] John Alchin, EVP and Co-CFO, Comcast, presentation at Merrill Lynch U.S. Media Day at 13 (June 8, 2006), http://library.corporate-ir.net/library/11/118/118591/items/201453/MerrillJune2006.pdf.

[24] Comcast Press Release, *Comcast Reports Second Quarter 2006 Results* (July 27, 2006). This does not include systems recently acquired from Adelphia and Time Warner Cable.

[25] *CMCSA – Comcast Corporation at Sanford C. Bernstein & Co. Strategic Decisions Conference*, Thomson StreetEvents at 5 (June 2, 2006) (statement of Comcast Chairman and CEO Brian Roberts). This does not include systems Comcast recently acquired from Adelphia and Time Warner Cable.

[26] Comcast Press Release, *Comcast Reports Second Quarter 2006 Results* (July 27, 2006).

[27] Cox Press Release, *Cox Digital Telephone To Be Available in All Cox Markets by End of Year* (July 13, 2006).

[28] *Id.*

Moreover, cable modem service has a significant lead over DSL in broadband subscribership.[29] As a result, cable operators will be able to take advantage of their lead in video and data to grow telephony.

B. Wireless

Wireless voice service is a close alternative for wireline service, is priced similarly, and thus competitively disciplines wireline services. As a result, wireless companies continue to increase their minutes of use and subscriptions at a double-digit pace, while wireline services are experiencing declines in the number of access lines and minutes.

Along with cable, wireless service currently provides a significant alternative to traditional telephony.[30] A number of national wireless providers including Verizon Wireless, Cingular, Sprint Nextel, and T-Mobile, along with significant regional competitors, compete with landline service. As the Commission noted, wireless service has grown so spectacularly that of 379 million voice lines counted by the Commission at the end of 2005, 203.7 million – approximately 54 percent – are wireless.[31]

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[29] *See* Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status as of December 31, 2005* at Table 3 & Chart 6 (July 2006) (showing cable's share of residential high-speed lines at 57.5 percent, while ADSL and SDSL together have less than 41 percent, as of December 2005). *See also* Michael Nathanson, *et al.*, Bernstein Research, *Broadband Update: Dial-Up Giveth, Broadband Taketh; Change in AOL Strategy Could Accelerate Transition* at Exhibit 10 (Aug. 25, 2006) (estimating cable with a 60.7 percent share of the broadband market and DSL with a 39.3 percent share, as of 2Q06); Aryeh Bourkoff, *et al.*, UBS, *2Q06 HSD/VoIP Review & Outlook: Triple-Play Tilting the Scales in HSD* at Table 3 (Aug. 15, 2006) (estimating cable with a 52.5 percent share of the high-speed data market and DSL with a 46.5 percent share, as of 2Q06).

[30] *See, e.g.*, Douglas Shapiro, *et al.*, Banc of America Securities, *Battle for the Bundle* at 1, 30-34 (June 14, 2005).

[31] *See* Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2005* at Tables 1 & 14 (July 2006).

Both consumers and suppliers[32] view wireless as an alternative to wireline services, resulting in wireless putting competitive pressure on wireline. Wireless displacement occurs on at least three levels. First, wireless minutes generally displace wireline minutes. Second, because of the prevalence of wireless phones, customers buy fewer second or third lines than they would absent competition from wireless. Third, an increasing number of customers use wireless as their primary service or use only wireless minutes by "cutting the cord."

Consumer surveys reveal that wireless service has displaced 64 percent of long distance and 42 percent of local calling from landlines in households with wireless phones.[33] A Yankee Group survey found that approximately 10 percent of wireless users do not have a landline phone at all.[34] Industry trends and market demographics suggest that this competition will only intensify.[35] Indeed, some Wall Street analysts still view

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[32] *See, e.g.*, Application for Transfer of Control, WT Docket No. 05-63, at 30, 31 (FCC filed Feb. 8, 2005) (the combined Sprint/Nextel "will position its services as a competitive alternative to wireline service, to the benefit of intermodal competition and consumers," and "will have a greater ability to compete for business that historically has gone to wireline companies"); AT&T Corp., Form 10-K (SEC filed Mar. 10, 2005) ("Consumer long distance voice usage is declining as a result of substitution to wireless services, internet access and e-mail/instant messaging services, particularly in the 'dial one' long distance, card and operator services segments"); Petition to Deny of Qwest Communications Int'l, Inc., WC Docket No. 05-65 at 35 (FCC filed Apr. 25, 2005) ("Consumers have demonstrated that they are increasingly willing to replace our wireline service with the wireless services of our competitors").

[33] Kate Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 & Exh. 3 (Dec. 2005).

[34] Keith Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services* at 5 (July 27, 2005). *See also* J. Armstrong, *et al.*, Goldman Sachs, *2006 Outlook – Stuck in Neutral* at 31 (Jan. 13, 2006) (wireless-only customers represent a 12.5 percent share of the residential market).

[35] *See, e.g.*, Blake Bath, Lehman Brothers, *Wireless Services: Industry Overview, Raising '06-'08 Wireless Net Adds by 50%* at 3 (June 16, 2005) (increasing by 50 percent estimates of net wireless subscriber additions through 2008 and predicting that wireline

wireless displacement "as the leading cause of access line losses currently and [] continue to believe this factor is likely to increase over the next 12 months as it has in the past."[36]

The wireless carriers' all-distance plans, beginning in 1999 and 2000, led to massive displacement away from landline long distance calls and reversed what had been a steady increase in wireline long distance minutes. Indeed, the Commission has held that wireless belongs in the same market as wireline based on evidence that "consumers are increasingly using their mobile wireless service for long distance calls."[37]

The absolute increase in wireless minutes has been explosive. By 2005, wireless minutes of use had exceeded 1.4 trillion, an increase of 35.8 percent from 2004, and more than four times the total in 2000.[38] This increased usage has been accompanied by a rapid erosion in traditional distinctions between the locations from which subscribers use fixed and mobile service, as subscribers increasingly use their mobile devices at stationary locations from which wireline alternatives could readily be used. For example, a Yankee Group survey found that the percentage of wireless usage in the home by

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displacement, penetration of the youth market, and expanded wireless data offerings will generate "12-18 million new wireless subscribers per year for the next several years," resulting in 85 percent market penetration by 2010).

[36] Frank G. Louthan IV, *et al.*, Raymond James, *Reassessment of Access Lines and Wireline Carriers* at 2 (July 5, 2006). *See also* Frank G. Louthan IV, *et al.*, Raymond James, *VZ, SBC, BLS, Q: Cable Threat Comparison for RBOCs* at 2 (July 11, 2005) (expecting wireless "to be the largest displacer of access lines over the next five years"); Jason Armstrong, *et al.*, Goldman Sachs, *2006 Outlook – Stuck in Neutral* at 31 & Exh. 20 (Jan. 13, 2006) (forecasting losses from wireless displacement greater than losses to cable/VoIP).

[37] *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 94 (2005) ("*Verizon/MCI Merger Order*").

[38] *See* CTIA, *Background on CTIA's Semi-Annual Wireless Industry Survey*, http://files.ctia.org/pdf/CTIAEndYear2005Survey_update.pdf.

mobile phone users doubled as a percentage of total usage between 2001 and 2005.[39] By 2005, wireless subscribers reported that 24 percent of their wireless calling took place inside the home, and 10 percent of their wireless calling took place at work.[40]

During the same period that wireless minutes have grown rapidly, wireline minutes have declined. The Commission's own data show that average residential wireline toll minutes have declined rapidly for the industry as a whole – from an average of 149 minutes per month in 1997, down to only 71 minutes per month in 2003 (and undoubtedly much less today, given the increase in wireless and decrease in wirelines).[41] In total, consumers reduced the number of long distance minutes of use on landline phones by 52 percent between 1997 and 2003.[42] Moreover, approximately 33 percent of wireless subscribers use their landline only for local calls.[43] These findings "suggest[] that wireless is eroding the usage of wireline long distance and local toll services twice as much as the rate of complete wireless substitution."[44] Not surprisingly in light of these trends, data from the Telecom Industry Association reveal that revenue from wireless services has outpaced revenue from wireline long distance since 2003 and will surpass

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[39] *See* Keith Mallinson, Yankee Group, *Wireless Substitution of Wireline Increases Choice and Competition in Voice Services* at Exh. 3 (July 27, 2005).

[40] Kate Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 (Dec. 2005).

[41] *See* Ind. Anal. & Tech. Div., Wireline Competition Bureau, *Trends in Telephone Service* at Table 14.2 (June 2005) (includes: IntraLATA-Intrastate, InterLATA-Intrastate, IntraLATA-Interstate, InterLATA-Interstate, International, Others (toll-free minutes billed to residential customers, 900 minutes, and minutes for calls that could not be classified)).

[42] *See id.*

[43] David Chamberlain, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Oct. 2005).

[44] *Id.* at 6.

revenue from landline local exchange calls by 2007.[45] According to Frost & Sullivan, "[w]ireline minutes of use were about 82 percent of the total in 2004 and are expected to decline to about 32 percent by the end of the forecast period in 2011. About half of wireline minutes are expected to move to wireless and the other half are expected to move to VoIP during this period."[46]

Another manifestation of wireless competition is that a growing share of wireless subscribers are abandoning their wireline phones altogether – "cutting the cord." Lehman Brothers estimates that 20 million wireline access lines have been lost to wireless since 1999, and that wireless displacement will continue to add more than 6 million new wireless subscribers each year.[47] As a result, analysts predict that the number of wireless-only users will grow to 20-25 percent of the market by 2010.[48] A Harris Interactive survey found that 39 percent of current landline customers are interested in going wireless altogether in the next two years.[49] And even if they are not

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[45] *See TIA*, Total Telecom, *U.S. Telecoms Services Revenue to Rise 3.6% in 2005* (Mar. 4, 2005) (citing TIA's 2005 Market Review and Forecast).

[46] Frost & Sullivan, *Trends in Wireline Substitution – North American Markets* at 1-34 (2005) (data for North America).

[47] Blake Bath, Lehman Brothers, *Telecom Services - Wireline* at Figure 11 (July 7, 2005). *See also* Timothy Horan, *et al.*, CIBC World Markets, *3Q05 Communications and Cable Services Review* at Exhibit 12 (Nov. 23, 2005) (estimating wireless displacement at 20 million lines as of year-end 2005, increasing by 5-6 million lines each year through 2007).

[48] *See* David Barden, *et al.*, Banc of America Securities, *Setting the Bar* at 4 (June 14, 2005); Frank G. Louthan IV, Raymond James Equity Research, *Reassessment of Access Lines and Wireline Carriers* at 2 (July 5, 2006) (citing IDC estimates).

[49] *See* National Consumers League Press Release, *National Consumers League Releases Comprehensive Survey about Consumers and Communications Services* (July 21, 2005).

replacing their landline phone altogether, at least 14 percent of U.S. consumers now use their wireless phone as their primary phone.[50]

Wireless prices have declined by more than 50 percent since 2001.[51] The innovation of offering large buckets of minutes for a fixed price has led to substantially lower revenues per minute, but because of the overall growth in use, U.S. carrier average revenue per user actually increased. Customers continue to migrate to these large-bucket plans, leading to increased displacement of wireline minutes by wireless. Other forms of wireless technology are also poised to hit the market. For example, Sprint ran trials in five cities of Telular's technology, which provides a wireless unit at home that enables the family phone number to ring on the home phone as well as mobile phones.[52] Telular announced the availability of its fixed cellular terminal for the Verizon Wireless network. The terminal, which is part of the same product series used in the earlier Sprint trial, provides customers with increased wireless connectivity through standard telephones, fax machines, and computer equipment.[53]

Wireless and wireline prices for similar service offerings are now comparable and the services are highly cross-elastic. An econometric analysis by the Competitive Enterprise Institute found that "a one percent increase in wireline prices would result in a nearly two percent increase in wireless demand. In other words, if wireline carriers were

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[50] *See* Clint Wheelock, In-Stat/MDR, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution* at 1 (Feb. 2004) ("14.4% of US consumers currently use a wireless phone as their primary phone").

[51] *See* Kate Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at Exh. 2 (Dec. 2005).

[52] Telular Corporation Press Release, *Telular Corporation Announces Market Trial with U.S. Wireless Carrier for Phonecell Fixed Wireless Terminal* (Oct. 20, 2004).

[53] Telular Corporation Press Release, *Telular Corporation Announces Approval for Use on the Verizon Wireless Network* (Feb. 1, 2006).

to increase their prices, wireless service providers would gain a substantial number of subscribers."[54] Just as important, the wireless carriers would gain a substantial number of minutes.

Finally, entirely new forms of non-traditional wireless technologies will continue to increase consumer choices when making voice calls. WiFi is already a well-documented and growing phenomenon. So-called "hot spots" are proliferating; there are now more than 40,800 Wi-Fi hot spots in the United States.[55] WiMAX, a wireless technology that is being driven by deep-pocketed Silicon Valley companies such as Intel and Cisco, also is being touted as a new and fierce competitor to existing wireless and wireline technology.[56]

Wireless voice competition will also come from the high-speed data networks currently in service and being expanded across the country, which will enable customers to make wireless VoIP calls. Verizon Wireless and Sprint both are rolling out EV-DO networks that provide high-speed connectivity; Cingular has deployed a GSM equivalent, and T-Mobile is following suit.[57] Cable companies also will begin to offer wireless,

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[54] Stephen B. Pociask, Competitive Enterprise Institute, *Wireless Substitution and Competition: Different Technology but Similar Service – Redefining the Role of Telecommunications Regulation* at 15 (Dec. 15, 2004), http://www.cei.org/pdf/4329.pdf.

[55] Forbes, *Wi-Fi Hotspot Directory*, http://www.jiwire.com/search-hotspot-locations.htm (40,860 hotspots in the U.S. as of August 29, 2006).

[56] *See, e.g.*, George M. Foote, Bracewell & Giuliani LLP, *Wimax and the Future Telecommunications System*, remarks at the 2006 Telecom, Cable, & Wireless Conference, Austin, Texas (Mar. 9, 2006), http://www.bracewellgiuliani.com/files/tbl_s16Publications/FileUpload77/1596/UT_Telecom_Conf__Paper.pdf.

[57] Verizon's service is now available to more than 150 million people, and there will be nationwide coverage by the end of 2007. Verizon News Release, *Verizon Communications Reports Strong 4Q 2005 Results, Driven by Continued Growth in Wireless and Broadband* (Jan. 26, 2006); Galen Gruman, *Taking IT to the Streets: 3G Arrives*, InfoWorld (Mar. 4, 2005). Sprint's Power Vision EV-DO is now available in

adding to the bundles they currently offer.[58] Sprint plans to offer "an integrated wireline/wireless service with cable companies in seven markets by 2H06."[59] While initially cable is likely to resell wireless, enhancements are likely to create genuine fixed wireless integration.[60] Such integration would allow cable telephony and wireless to share minutes of use and devices, giving consumers a home phone and a mobile phone in a single package with near seamless interchangeability.[61] As Time Warner Cable

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219 major markets to over 153 million people, with plans to reach more than 200 million people by year-end. Sprint, *The Largest Mobile Broadband Network*, http://powervision.sprint.com/mobilebroadband/plans/coverage.html; Sprint Press Release, *Sprint Accelerates EV-DO Revision-A Mobile Broadband Upgrade* (Aug. 3, 2006). Sprint recently announced will begin its upgrade to EV-DO revision A in late 2006; nationwide coverage by the third quarter of 2007. *Id.* Cingular's UMTS/HSDPA network is available to nearly 35 million people in 52 communities, including 16 major metropolitan areas, and the company plans to extend the network rapidly, with service in most major markets by the end of 2006. Cingular News Release, *Panasonic, Cingular Introduce Panasonic Toughbook CF-29 Notebooks with Built-In 3G-Based BroadbandConnect Service* (Aug. 7, 2006); Cingular News Release, *Cingular Launches 3G Network* (Dec. 6, 2005). T-Mobile plans to begin deployment of HSPDA in 2007. Tom Watts, *et al.*, Cowen and Company, *Mobile Content Delivery – The Next Wave of Wireless Growth* at 6 (June 28, 2006).

[58] *See* Sprint Nextel News Release, *Sprint Nextel, Comcast, Time Warner Cable, Cox Communications and Advance/Newhouse Communications To Form Landmark Cable and Wireless Joint Venture* (Nov. 2, 2005) (Beginning in 2006, Comcast, Time Warner Cable, Cox, and Advance/Newhouse plan to "offer consumers access to the expanded four element bundle, or 'Quadruple Play,' or any combination of services including video, wireless voice and data services, high speed Internet and cable phone service").

[59] Timothy Horan, *et al.*, CIBC World Markets, *Sprint Nextel: Analyst Day Reinforces Out Long-Term Positive View on S* (Mar. 8, 2006).

[60] *See* Viktor Shvets & Andrew Kieley, Deutsche Bank, *VoIP: State of Play* at 9 (June 22, 2005) ("Integrating VoIP calling with wireless capability is the 'holy grail' for VoIP operators, as it is generally viewed as a 'killer application' which could lead to substantially higher demand for the service. With this sort of capability, VoIP usage in the home not only becomes wireless, but could allow users to make free VoIP calls wherever a WiFi connection is available, or to switch off between cellular and VoIP calling using the same handset").

[61] *See* Peter Howe, *Comcast Plans Boston Launch of Internet Phone Service*, Boston Globe at E1 (Apr. 14, 2005) (confirming Comcast's plan to offer a new integrated

Chairman and CEO Glenn Britt stated, "[t]his is about developing a wireless platform that connects all of our services for the customer both inside their home and when they are on the road."[62] Toward this end, RCN recently announced that it will soon begin selling wireless services to customers in Boston, as part of a "quadruple play" bundle.[63]

C. VoIP

In addition to obtaining VoIP service from a cable company, any customer with broadband access – which is now available to more than 90 percent of U.S. households from a provider other than the incumbent LEC[64] – can obtain voice service from multiple independent VoIP providers. Vonage, for example, has more than 1.8 million VoIP subscribers, and is adding more than 22,000 subscribers each week.[65] Skype, a service that allows customers to make ***free*** computer-to-computer calls, was acquired by eBay; Skype gained 100 million users in just two-and-a-half years, and is adding more than 200,000 users daily.[66] AOL, the country's largest Internet service provider, now offers

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wireless/VoIP service that would provide a cell phone that would convert to an unlimited fixed-price Internet phone inside a subscriber's home).

[62] Michael Rollins, *et al.*, Citigroup, *Spectrum Auction Tests Endurance & Strategy of Cable & Wls Bidders* at 5 (Aug. 16, 2006).

[63] RCN Press Release, *RCN Leaps Into the Quadruple Play with Wireless Offering Powered by MobilePro* (Aug. 28, 2006).

[64] *See, e.g.*, NCTA, *Broadband Availability*, http://www.ncta.com/ContentView.aspx?contentId=60 (116.1 million homes passed by cable modem service as of 2005); NCTA, *2006 Industry Overview* at 11 & Chart 6 (cable modem service is available to approximately 93 percent of homes passed by cable as of year-end 2005) (citing Morgan Stanley).

[65] Vonage, Form 10-Q at 14 (SEC filed Aug. 4, 2006). More than 95 percent of Vonage subscribers are in the U.S. *See* Vonage, Form S-1 at 1 (SEC filed May 23, 2006).

[66] *See* Richard Klugman, *et al.*, Prudential Equity, *The Dust Has Settled: We Think It's O.K. To Own Telecom Stocks Again* at 40 (July 20, 2006).

VoIP service.[67] Google offers free PC-to-PC calling worldwide through Google Talk.[68] MSN provides free PC-to-PC calling worldwide through Windows Live Messenger, and MSN acquired Teleo, a PC-to-PSTN VoIP provider, in August 2005.[69] Yahoo! offers free PC-to-PC calling worldwide through Yahoo! Messenger, and in June 2005, Yahoo! acquired Dialpad, a PC-based VoIP provider with 14 million subscribers, and the ability to offer PC-to-PSTN calling.[70] Other companies – like Net2Phone and InPhonex – offer similar, unlimited-free-calling soft-phone software, and also offer call termination on the PSTN at rates well below those offered for circuit-switched service and VoIP services over private IP backbones.[71] Net2Phone claims to "route[] millions of minutes daily over data networks."[72] As one analyst has noted, the competition provided by these services simply does not show up at all in the conventional metrics of competition: these Internet-

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[67] *See* AOL Press Release, *America Online Introduces AOL® Internet Phone Service* (Apr. 7, 2005).

[68] Google, *GoogleTalk: Talk and IM with Your Friends for Free*, http://www.google.com/talk/.

[69] MSN, *Windows Live Messenger*, http://get.live.com/messenger/overview; MSN Teleo, *Microsoft Acquires Teleo Inc.*, http://teleo.msn.com/.

[70] Yahoo! Press Release, *Yahoo! Messenger Announces Free, High-Quality Worldwide Calling* (May 18, 2005); Yahoo!, *Yahoo! Messenger with Voice*, http://messenger.yahoo.com/feat_voice.php;_ylt=AmP3BcRmcYGy6q1aSsAa5q5wMMIF; *Yahoo Enters VOIP Fray*, Light Reading (June 15, 2005), http://www.lightreading.com/document.asp?doc_id=75746&site=lightreading&WT.svl=news1_1.

[71] *See, e.g.*, Mike McCormack, *et al.*, Bear Stearns, *May Broadband Buzz* at 13 (May 30, 2006); InPhonex, *Products and Services*, http://www.inphonex.com/products/products.php.

[72] Net2Phone, *About Net2Phone: Company Overview*, http://web.net2phone.com/about/company/.

enabled voice services can "substitute[] for calling occasions, even as they leave measured market share untouched."[73]

Customers also view VoIP service as a replacement for their telephone line. Approximately 60 to 70 percent of Vonage customers bring their old phone number when they sign up.[74] And as analysts have noted, third-party VoIP providers offer service "at rates significantly below comparable RBOC prices."[75] Analysts estimate that these over-the-top VoIP providers will displace five percent of local telephone access lines by the end of 2010.[76]

Many subscribers appear to be making the switch from narrowband to broadband principally in order to obtain VoIP phone service. According to a recent study by Bernstein Research, at least 40 percent of all VoIP subscribers are new subscribers to broadband services that are attracted to the voice-data-video bundle that cable operators offer.[77] As Bernstein explains, cable "[v]oice bundles induce not only existing HSD [high-speed data] customers to add voice to existing bundles, they also add incremental

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[73] Jeffrey Halpern, *et al.*, Bernstein Research, *U.S. Telecom and Cable: Flat-Rate Pricing Signals Telephony Voice ARPU Compression at 4* (Apr. 8, 2004).

[74] *See* Doug Shapiro, *et al.*, Banc of America Securities, *Battle for the Bundle* at 30 (June 14, 2005) ("[B]oth Time Warner and Vonage have stated that about 60-70% of customers port their number. For the balance, some of these may be customers moving into an area for the first time who have no local number to port, or people who don't care to port their number, but we believe that some are using VoIP as a second line.").

[75] Jeffrey Halpern, *et al.*, Bernstein Research Call, *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth* at 5-6 & Exh. 5 (July 15, 2005); Viktor Shvets & Andrew Kieley, Deutsche Bank, *VoIP: State of Play* at 7 (June 22, 2005).

[76] *See* Jonathan Chaplin, *et al.*, JPMorgan, *Telecom Services/Wireline: State of the Industry: Consumer* at 12 (Jan. 13, 2006).

[77] *See* Craig Moffett, *et al.*, Bernstein Research, *Cable and Satellite: ~40% of Cable VoIP Customers "New" to Broadband* (July 6, 2006).

growth to HSD through three separate mechanisms. First, they induce new customers either to *convert* from dial-up to HSD in order to get the bundled phone price; second, they induce DSL customers to switch to cable HSD in order to get the bundled phone price; and/or third, they induce HSD customers to retain their HSD service, thereby reducing churn."[78]

E-mail and instant messaging also displace a significant fraction of traffic that used to travel on wireline networks, including revenue-producing traffic such as long distance calls.[79] A large and growing fraction of this traffic originates and/or terminates on competitive networks, but even when carried over the incumbents' network, such traffic displaces significant usage-sensitive (*e.g.*, per-minute or per call) revenues that incumbents otherwise would receive.

Finally, other technologies are poised to become significant competitors for voice traffic. Broadband-over-powerline (BPL), for example, enables users to have access both to high-speed Internet access and VoIP service. As Chairman Martin recently noted, BPL "holds great promise as a ubiquitous broadband solution that would offer a viable alternative to cable, digital subscriber line, fiber, and wireless broadband solutions. Moreover, BPL has unique advantages for home networking because consumers can simply plug a device into their existing electrical outlets to achieve broadband

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[78] *Id.* at 3.

[79] *See* Daryl Schoolar, In-Stat/MDR, *State of the US Carrier Market* at 6 (Oct. 2003) ("Consumers are using e-mail and instant messaging in place of a phone call."); Charles Golvin, *et al.*, Forrester, *Sizing U.S. Consumer Telecom*, at 19 n.5 (Jan. 2002) ("[a]lternate forms of communications, such as email and instant messaging, []reduce long-distance minutes of use.").

connectivity."[80] BPL is therefore an additional avenue for bringing VoIP "to American homes and businesses."[81]

This service is beginning to be commercially offered. A number of energy companies have completed or are conducting trials of the technology, and at least seven companies have moved to commercial deployment.[82] In December 2005, CURRENT Communications, a BPL provider started by Liberty Media, and TXU, a utility, started commercial deployment of BPL to over 2 million homes in Texas with an advanced version of BPL allowing speeds up to 10 Mbps.[83] The TXU deployment in Texas includes plans to provide the triple play of voice, video and data "delivered over existing electrical lines by simply plugging into any home outlet."[84] CURRENT has also announced plans to begin offering VoIP service to BPL customers in Ohio.[85]

As the foregoing makes clear, all providers of telephony services, including local, long distance, and bundles of services, face vigorous and increasing competition. As the Commission concluded, "competition from intermodal competitors is growing quickly,"

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[80] Statement of Chairman Kevin J. Martin, *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband over Power Line Systems*, Memorandum Opinion and Order, ET Docket No. 04-37, *et al.*, FCC 06-113 (rel. Aug. 7, 2006).

[81] *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems*, Report and Order, 19 FCC Rcd 21265, ¶ 1 (2004).

[82] Qaisar Hasan, *et al.*, Buckingham Research, *Pipe Dreams: Analyzing the Viability of Disruptive Broadband Models* at 14 (Mar. 17, 2006).

[83] Current Communications News Release, *TXU and CURRENT Communications to Create Nation's First Multipurpose Smart Grid* (Dec. 19, 2005).

[84] CURRENT Communications News Release, *TXU and CURRENT Communications to Create Nation's First Multipurpose Smart Grid* (Dec. 19, 2005).

[85] United Powerline Council, *UPLC Powerline*, Vol. 3, Issue 1 (Jan. 17, 2006), http://www.uplc.utc.org/page/admin/?cbr_v=dcb&nt=true&cbr_eid=38610&ct=contentbrowser.

and the Commission "expect[s] it to become increasingly significant in the years to come."[86] In these circumstances, continuing to apply regulations designed for an industry that was entirely different makes no sense and is affirmatively harmful to consumers.

III. The Commission should eliminate anachronistic regulations that no longer make sense in a world characterized by the rapid deployment of advanced broadband technologies and geography-agnostic facilities and services.

A. The Commission should eliminate carry-over equal access requirements, including any requirement that LECs read lists of interexchange carriers to their customers.

As the foregoing makes clear, the communications world today is characterized by rapid deployment of advanced broadband technologies and geography-agnostic facilities and services by multiple competing providers over a variety of technology platforms. In this market, consumers demand the benefits they receive from any distance services and bundled offerings, and the concept of separate local and long distance services is increasingly becoming an anachronism. The Commission therefore should eliminate the carry-over "equal access" obligations that were preserved by section 251(g) of the Act. The Commission opened an inquiry into the continued need for these restrictions more than four years ago.[87] The record in that proceeding demonstrated then that the requirements should be eliminated, and as described above, the case for elimination is even stronger now.

The Consent Decree obligations "relating to equal access and nondiscrimination for interexchange carriers" that were preserved by section 251(g) originated in the AT&T Consent Decree, or MFJ, that broke up the Bell System in 1984. That decree split the

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[86] *Verizon/MCI Merger Order* at ¶ 102.

[87] *Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, 17 FCC Rcd 4015 (2002).

Bell System's local exchange business from its interexchange business, and contained restrictions on the BOCs to make sure that they did not, in effect, continue to treat AT&T as if they were still related. As Judge Greene explained,

> "Although after divestiture the Operating Companies will no longer have the same incentive to favor AT&T, a substantial AT&T bias has been designed into the integrated telecommunications network, and the network, of course, remains in that condition."[88]

The decree restrictions, therefore, were not broad "nondiscrimination" prohibitions. Instead, they were narrowly focused provisions designed to complement the divestiture requirement of the AT&T decree, and they were designed to make sure the divested BOCs would not continue to favor AT&T. Judge Greene explained that equal access included:

> "(1) dialing parity; (2) rotary dial access; (3) network control signalling; (4) answer supervision; (5) automatic calling number identification; (6) carrier access codes; (7) directory services; (8) testing and maintenance of facilities; (9) provision of information necessary to bill customers; and (10) presubscription."[89]

The Commission adopted this definition of equal access in 1985.[90]

When Congress carried the requirements of the AT&T and GTE consent decrees over to the 1996 Act, it took pains to make clear that it did not expect these consent-decree-based rules to be permanent. Section 251(g) expressly notes that the restrictions should continue only until superseded by the Commission. Moreover, Congress twice referred to "[t]hese interim restrictions and obligations"[91] and took care to point out that

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[88] *United States v. American Tel. & Tel. Co.*, 552 F.Supp. 131, 195 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983).

[89] *United States v. GTE Corp.*, 603 F.Supp. 730, 743 n.55 (D.D.C. 1984).

[90] *MTS and WATS Market Structure Phase III*, 100 F.C.C.2d 860 ¶ 56 (1985).

[91] H.R.REP NO. 104-458 at 123 (1996).

"The use of the provisions of the respective consent decrees to provide, on an interim basis, the substance of the new statutory duty in no way revives the consent decrees."[92]

These regulations, designed for a world of separate local exchange and long distance providers, make no sense in today's world of advanced broadband technologies, facilities, and services that are geography-agnostic. In fact, they complicate the design and deployment of networks based on new technologies, and impose inefficiencies on the BOCs not faced by other competitors. As a result, these regulations are "no longer necessary in the public interest," and there is no justification for continuing to impose outdated carry-over obligations.

The Commission also should repeal the in-bound scripting obligations that continue to apply to the BOCs and GTE but not to other LECs. It is clear that these anachronistic requirements no longer serve any valid purpose and make no sense in today's robustly competitive world. As a result, they should be eliminated.

As discussed above, consumers overwhelmingly demand all-distance services from a single provider. Yet BOCs must inform new local customers that they can obtain long distance services separate from the local services they have chosen to buy from the BOC, and offer to read a list of long distance providers. This is inefficient and annoying to customers.

These requirements are a holdover from an entirely different era. The practice of BOC service representatives affirmatively informing customers of their presubscription options and having lists of carriers to read goes back to the introduction of equal access in 1984. At the time, equal access and presubscription were brand new, and it was

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[92] *Id.*

important to let customers know that they could choose a long distance company other than AT&T.

More than 20 years later, the communications marketplace has undergone at least two fundamental transformations. Following divestiture, numerous interexchange carriers offered stand-alone long distance to consumers, often bombarding them with dinnertime telemarketing calls and incentives to change carriers. Consumers clearly understood that they had a choice of carriers and exercised their choice. More recently, the marketplace has been transformed again. As described above, customers can and are choosing among a variety of all-distance services offered by a wide range of intermodal providers. As the Commission has noted, "long distance service purchased on a stand-alone basis is becoming a fringe market."[93] There is, therefore, no justification for continuing to impose these anachronistic requirements only on the BOCs and GTE operating companies.

B. The Commission should not re-regulate long distance and all distance services by subjecting them to so-called "dominant" carrier regulations such as tariffing and price cap rules.

The Commission also should expressly decline to *re-regulate* the long distance and all-distance services offered by former Bell operating companies if they choose to offer these services in an efficient integrated basis now that the section 272 separate affiliate requirements have sunset under the schedule prescribed by Congress. These companies' long distance services are not subject to so-called "dominant" carrier regulations today, such as tariffing or price cap requirements. And there's no plausible argument to be made in today's market environment that any provider of long distance or

[93] *Verizon/MCI Merger Order* at ¶ 92.

any distances services can be characterized as dominant. Indeed, in today's market, with the deployment of new technologies and consumer demand for the benefits they receive from any distance services and bundled offerings, the concept of separate local and long distance services is increasingly becoming an anachronism. In this environment, it would make no sense, and would be affirmatively anticompetitive, to force one among many competing providers to choose between rolling out new services and facilities in the most efficient manner, or being subject to increased regulations designed for a different era and marketplace.

For example, the Commission's rules require "dominant" carriers to file tariffs, and to provide detailed cost support, traffic and revenue projections, and two sets of work papers.[94], But in today's environment, market forces will ensure that each provider's rates, terms, and conditions are reasonable and satisfy customer demand – failure to do so will cause customers to "vote with their feet" and choose a competitive provider. As a result, it would make no sense to subject only the BOCs' long distance and all-distance services to tariffing requirements.

The Commission did away with tariffing requirements for long distance services in 1997.[95] The Commission determined that tariffs were not necessary to protect the public interest because competition in the long distance market would prevent carriers from raising prices and from engaging in predatory pricing.[96] Since the Commission's

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[94] 47 C.F.R. § 61.38

[95] *Regulatory Treatment of LEC Provision of Interexchange Services*, 12 FCC Rcd 15756 (1997) ("*LEC Classification Order*"); *see also Policy and Rules Concerning the Interstate, Interexchange Marketplace,* 11 FCC Rcd 20730 (1996) ("*Interexchange Policy Order*").

[96] *LEC Classification Order*, ¶¶ 97, 107.

determination in that docket, competition has *increased* dramatically, leading to significant price reductions and a wide array of innovative service choices for customers.

In the *LEC Classification Order*, the Commission expressed concern that tariff requirements for long distance services might "stifle price competition and marketing innovation."[97] According to the Commission, a requirement to file tariffs would "reduce incentives for competitive price discounting, constrain carriers' ability to make rapid, efficient responses to changes in demand and cost, impose costs on carriers that attempt to make new offerings, and prevent customers from seeking out or obtaining service arrangements specifically tailored to their needs."[98] The Commission also expressed concern that tariffing long distance services could "facilitate tacit coordination of prices" among carriers. And the extensive cost support required in the tariffing process "discourage[s] the introduction of innovative new service offerings, because it requires a carrier to reveal its financial information to its competitors."[99] Further, as the Commission recognized, imposing tariffing requirements on only a few competitors would not only "impose significant administrative burdens on the Commission and the [BOCs];" it would also "adversely affect competition." *Id.* at ¶ 89. Accordingly, the Commission should eliminate the possibility that mandatory tariffing requirements will be imposed on BOCs' long distance and all-distance services if offered through the LEC.

Similarly, price cap regulation does not apply today to providers of long distance services, and no interexchange toll service is subject to price cap regulation. The Commission eliminated price cap regulation for interstate toll services in 1999 and

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[97] *Id.* at ¶ 88.

[98] *Id.*

[99] *Id.* at ¶ 90.

permitted price cap ILECs to remove their interstate intraLATA toll and interLATA corridor services from price cap regulation once toll dialing parity was implemented.[100] Read strictly, however, the price cap regulations applicable to the retail offerings of a Bell company[101] would subject Verizon's in-region, interLATA services to price cap regulation, if Verizon decides to offer long distance or all-distance services on a more integrated and efficient basis post-272 sunset. This makes no sense.

As the Commission noted when deregulating mobile wireless services, "[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates."[102] The Commission's rationale was a simple one: "in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power."[103] The same rationale applies today to long distance and all-distance services. Consumers have benefited from extensive innovation, along with price reductions and a wide array of choices that have resulted from the robust competition for long distance and all-distance services today. Re-regulating some services by requiring only the BOCs to subject their

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[100] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, Fifth Report and Order, 14 FCC Rcd 14221, ¶ 45 (1999).

[101] 47 C.F.R. §§ 61.41-61.49

[102] *Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report and Order, 9 FCC Rcd 1411, ¶ 174 (1994).

[103] *Id.* at ¶ 173. *See also Interexchange Policy Order* at ¶ 42 (1996) ("Just as we believe that competition is sufficient to ensure that nondominant interexchange carriers' charges for interstate, domestic, interexchange services are just and reasonable, and not unreasonably discriminatory, and to protect consumers, we believe that competitive forces will ensure that nondominant carriers' non-price terms and conditions are reasonable."); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities*, First Report and Order, 85 F.C.C.2d 1, ¶ 88 (1980) ("firms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, would contravene Section 201(b) and 202(a) of the Act").

long distance or all-distance services to price cap rules would impose artificial price constraints and increased costs on a few service providers that would not apply to their competitors. This would affirmatively disrupt the robust competition that exists today, and therefore would be harmful to the public interest.

Moreover, subjecting BOCs' long distance or all-distance services to price cap regulation would require them to incur the cost of making systems and process changes for which there would be no corresponding public benefit. The Verizon telephone companies, for example, would have to modify systems to track interLATA service elements so that actual price indices could be maintained, and yearly base period demand could be quantified. In addition, systems would need to be designed and implemented for Verizon's long distance services, which are not now subject to price caps. Requiring such efforts would be a giant step backwards and would increase the cost of those services. To avoid such harm to consumers, the Commission should make clear that price cap regulations do not apply to BOC long distance or all-distance services offered on a more integrated and efficient basis post-272 sunset.

C. The Commission should eliminate the separation requirements that apply to the provision of long distance and all-distance service by independent LECs.

As discussed above, in today's market, with the deployment of new technologies and consumer demand for the benefits they receive from any distance services and bundled offerings, the concept of separate local and long distance services is increasingly becoming an anachronism. But Commission regulations that apply to the provision of independent incumbent LECs, but not other competitors, greatly complicate the design and planning for today's advanced all-distance services. The Commission's rules still

require incumbent independent LECs providing in-region, interstate, interexchange or international services on a facilities basis to provide such services through a separate affiliate that must maintain separate books of account and is prohibited from jointly owning transmission or switching facilities with the local exchange company.[104] While the independent LEC may offer interexchange services on a resale basis though a separate corporate division, it may not own interexchange switching or transmission facilities.

Now that section 272 has sunset for all of Verizon's service areas, Verizon could choose to integrate its local and long distance operations and offer both through its ILECs in its former Bell Atlantic jurisdictions.[105] But the Commission's independent LEC separation requirements prevent independent LECs from determining the most efficient structure for their long distance operations. Such inefficiencies may prevent carriers from taking advantage of scope economies that could be used to produce different services,[106] or may inhibit carriers from providing new services.[107] Where the Commission has eliminated such unnecessary restrictions, output has increased, prices

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[104] 47 C.F.R.§ 64.1903(a)(1), (2), and (b).

[105] Doing so has the potential to subject its long distance services to dominant carrier regulation, *see Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, 17 FCC Rcd 26869, n.8 (2002), and Verizon has sought forbearance from or a limited waiver of such regulations in a separate docket. *Petition of the Verizon Local and Long Distance Telephone Companies for Interim Waiver with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services; Petition of the Verizon Local and Long Distance Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-56, filed February 28, 2006.

[106] *See Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Memorandum Opinion and Order on Reconsideration 2 FCC Rcd 3035, ¶ 25 (1987).

[107] *See Computer III Remand Proceedings*, Report and Order, 6 FCC Rcd 7571, ¶ 8 (1991).

have fallen, and consumers have benefited. For instance, the elimination of structural separation requirements for the provision of customer premises equipment and enhanced services has resulted in increased competition and it has given consumers a choice of a myriad of suppliers.[108] Similarly, a reduction in the regulatory restrictions on the provision of interexchange services by independent local exchange carriers will promote increased competition and consumer choice.

IV. The Commission should eliminate its *Computer III* requirements, including CEI and ONA requirements.

The Commission recently acknowledged that when its *Computer Inquiry* proceedings began "almost four decades ago [it was] in an era far different from today in terms of the technological, marketplace, and regulatory environment for telecommunications carriers."[109] At that time, the BOCs' telephone networks were the "primary, if not sole, facilities-based platform available for the provision of 'information services' to customers,"[110] and the CEI and ONA requirements were based on the "implicit, if not explicit, assumption that the incumbent LEC wireline platform would remain the only network platform available to enhanced service providers."[111] As shown above, that assumption is wholly unfounded today. The CEI and ONA rules have become an anachronism that no longer reflects the realities of the communications

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[108] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Report and Order, 16 FCC Rcd 7418, ¶ 10 (2001).

[109] *Title I Order* at ¶ 21; *see also id.* at ¶ 1 ("Those regulations were created over the past three decades under technological and market conditions that differed greatly from those of today.").

[110] *Id.* at ¶ 3; *see also id.* at ¶ 47 (the *Computer Inquiry* rules were premised on the presence of a "single platform capable of delivering [enhanced} services . . . and only a single facilities-based provider of that platform.").

[111] *Id.* at ¶ 43.

marketplace, in which the Commission itself has recognized that "separate and different"[112] technologies and platforms now compete for the same customers.

The Commission has eliminated the application of these rules to wireline broadband Internet access services and Verizon's other broadband transmission services. As the Commission found, the development of new platforms, services, and service providers since 1966 – and the concomitant competitive pressures created by customers' migration to those new platforms, services, and service providers – now give the BOCs business reasons to sell services and facilities to unaffiliated enhanced service providers in order to keep customers on their networks. Far from having incentives to discriminate against unaffiliated ESPs, which was the animating assumption behind the CEI and ONA requirements, the BOCs have ample incentive under current market conditions to keep as much traffic as possible on their networks, and thus maximize utilization of those networks, in order to achieve economies of scale and scope.[113]

Nevertheless, the CEI/ONA rules remain in force for other enhanced services the BOCs provide today, and every new service must be evaluated to determine if it is subject to these rules. By contrast, the Commission's CEI and ONA rules do not apply to other local or long distance providers, including the "all distance" offerings of cable and over-the-top VoIP providers. Subjecting only the BOCs to these burdensome and costly regulations in a competitive marketplace stifles innovation and investment, skews

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[112] *Id.* at ¶ 42.

[113] *See id.* at ¶ 64 (competition provides the BOCs incentives to continue making services available to enhanced service providers in order to "maximize[e] the traffic on their networks, as this enables them to spread fixed costs over a greater number of revenue-generating customers").

competition, and harms consumers by slowing the development of new services and increasing the costs of offering them.[114]

V. The Commission should reform other pricing regulations that are incompatible with today's marketplace.

A. The Commission should begin now to eliminate mandatory tariff requirements that apply to only one among many competing providers.

In light of the intense competition between multiple competing providers that now characterize the communications marketplace, the Commission should begin now to eliminate mandatory tariffing requirements that apply only to one among these many competing providers. Instead, the Commission should permit carriers to file base-line tariffs from which commercial agreements may be negotiated, or to file price lists, as non-dominant carriers do.

The Commission's tariff filing rules for price cap carriers also require extensive information for new loop-based services, including cost support, detailed unit investment and operating expense data, estimates of the effect on traffic and revenues, and detailed working papers.[115] In light of the robust competition facing all providers, there is also no reason to subject carriers to these burdensome regulations designed for a different era.

The Commission also should eliminate regulations that prevent companies from negotiating commercial agreements to provide switched access services. The Commission has recognized that negotiated, commercial solutions are superior to

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[114] *See id.* at ¶¶ 65-70, 85.

[115] 47 C.F.R. § 61.49(g).

regulatory prescriptions, finding that "negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act."[116]

Enabling carriers to negotiate commercial arrangements for switched access services would give carriers the ability to evaluate the value exchanged in a particular transaction and price the arrangement accordingly. It would also allow carriers to explore alternative arrangements, such as bundling or cross-selling arrangements including a variety of technologies, in order to incorporate and transition to newer technologies and encourage the deployment of advanced services. As the Commission has routinely recognized, "the best way to achieve reliable, ubiquitous service . . . is to encourage further reliance on negotiation and market-based solutions to the fullest extent possible."[117]

A market-based approach, allowing companies to negotiate commercial agreements for switched access services, is the best long-term solution to ensuring the efficiency of the telecommunications markets in the face of substantial technological change. Such an approach permits carriers to craft interconnection agreements that reflect their particular needs. Moreover, market-based agreements are inherently more flexible and can be modified more easily than complex regulatory regimes, enabling carriers to adapt more quickly to emerging technologies.[118] By contrast, requiring ILECs and their wholesale customers to adhere rigidly to the switched access tariff structure – and preventing them from negotiating voluntary mutually beneficial arrangements that

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[116] *Unified Intercarrier Compensation Regime* at ¶ 14.

[117] *See, e.g., Report and Order, Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, 17 FCC Rcd 1209, ¶ 27 (2002).

[118] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Comments of Verizon, filed May 23, 2005, at 8-11.

depart from those terms – prevents companies from exploring alternative arrangements that address the parties' needs. It also stands as an obstacle to arrangements that might combine old-world and new-world services in innovative ways.

B. The Commission should eliminate requirements to post service terms and conditions on the internet for enterprise and government contracts.

The Commission should also eliminate its requirements that non-dominant carriers post rates, terms, and conditions for interstate, interexchange and international services for large business[119] and government customers on the Internet. Today, carriers must update their web sites and public disclosure sites within 24 hours after the effective date of a change in the rates, terms, or conditions of a detariffed service. Verizon enters into hundreds of negotiated agreements each month with large business and government customers. The time and expense involved in complying with the Commission's rules far outweigh any benefit for these customers.

The Commission required carriers to post rates, terms, and conditions in order to "mak[e] it easier for consumers . . . to compare carriers' service offerings."[120] Large businesses and government customers, however, do not obtain rates and terms they like by shopping carriers' posted rates and terms; instead they demand and receive individually negotiated deals that meet their individual needs, largely through formal bidding processes. Because the requirement to post rates, terms, and conditions for these customers does not serve a useful purpose, there are no benefits that outweigh the costs imposed by the regulations. They should, therefore, be eliminated.

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[119] These are generally customers with more than $250,000 in annual billings.

[120] *Interexchange Policy Order* at ¶ 85.

C. Real-world market developments since 1996 demonstrate that TELRIC must be reformed.

The Commission also should eliminate the assumption of a hypothetical network with efficiencies that no real-world carrier can match that underlies the TELRIC pricing regime for UNEs. As the Commission itself recognized in the *TELRIC NPRM*, the core problem with the TELRIC rules is directly traceable to the fact that they are not tethered to *any* real-world network, but instead are based on a hypothetical network construct that assumes false efficiencies that no actual carrier can achieve.[121] The theoretical nature of the rules also results in a standardless "black box" approach to setting prices that can be manipulated to produce any desired result.[122] That process has produced rates well below any rational measure of the incumbent's, or any other carrier's, real-world costs, forward-looking or otherwise.[123]

The Commission's current TELRIC pricing rules were adopted shortly after the passage of the 1996 Act with the avowed purpose of "jump start[ing]" competition.[124] When the Commission adopted the rules, it committed to review them after states had

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[121] *Review of the Commission Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking,18 FCC Rcd 18945, ¶¶ 49-50 (2003) ("*TELRIC NPRM*").

[122] *Id.* at ¶ 7.

[123] *See, e.g., Review of Section 251 Unbundling Obligation of Incumbent LEC,* Report and Order, 18 FCC Rcd 16978, ¶ 517 n.1581 ("*Triennial Review Order*") (stating that "the costs of self-providing . . . elements [are] likely much higher than obtaining them from the incumbent priced at TELRIC"); David M. Mandy and William W. Sharkey, Dynamic Pricing and Investment from Statis Proxy Models 17, 40 n.48 (Sept. 2003) (FCC OSP Working Paper Series, No. 40) (concluding that successive repricing based on a hypothetical network results in rates that understate costs).

[124] *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 488 (2002) (quoting 141 Cong. Rec. 15572 (1995) (Statement of Sen. Breaux)); *AT&T Corp. v. Iowa Utlis. Bd.*, 525 U.S. 366, 371 (1999).

implemented the first round of pricing decisions.[125] A decade has passed since then and in that time, there has been an explosive growth in intramodal and intermodal competition. *See* Section II, *supra*. As a result, artificially low UNE rates clearly are not "necessary in the public interest" and the TELRIC rules must therefore be repealed or modified.[126]

Indeed, the TELRIC pricing rules not only make no sense, but cause damage. TELRIC affirmatively discourages new investment by ILECs and other facilities-based providers, on the one hand, and eliminates incentives for CLECs to invest in their own networks, on the other.[127] The Commission itself recognized this in the *Triennial Review Order*, stating that "unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."[128]

Even apart from the Commission's obligation under the biennial review to update the TELRIC regime to reflect competitive developments, other sections of the Communications Act, as well as the Constitution, require the Commission to abandon TELRIC in favor of pricing rules that are based on the incumbents' actual forward-looking costs. The Communications Act requires that UNE rates be "just, reasonable, and nondiscriminatory."[129] UNE rates that are below the ILEC's actual forward-looking

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[125] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 620 (1996) ("*Local Competition Order*").

[126] 47 U.S.C. § 161(b).

[127] *See* Comments of the Verizon telephone companies, WC Docket No. 03-173, at 8-18 (filed Dec. 16, 2003) ("*Verizon TELRIC Comments*").

[128] *Triennial Review Order*, ¶ 3.

[129] 47 U.S.C. § 251(c)(3).

costs cannot meet this standard because they provide the CLECs with an artificial cost advantage and thus discriminate against the ILEC in its provision of retail services. Accordingly, the statutory standard of Section 251(c)(3) *requires* that UNE rates recover the ILEC's actual forward-looking costs.

The Constitution mandates the same result. The UNE regime gives competitors the right to the use and enjoyment of a portion of the incumbent's network. This constitutes a taking of property within the meaning of the Fifth Amendment and gives rise to a constitutional requirement to provide just compensation.[130] Just compensation, in the context of a governmental requirement that a business provide a good or service to third parties, must, at a minimum, cover the unavoidable costs of producing the good or service the government has requisitioned—*i.e.*, the actual forward-looking costs of production—and not force the entity to operate at a loss.[131] Because TELRIC calculates compensation due the ILECs based upon numerous assumptions that are divorced from the actual costs of providing, operating, and maintaining those facilities, it does not compensate ILECs for their actual forward-looking costs[132] and thus violates the Takings Clause.

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[130] *See Bell Atlantic Tel. Co. v. FCC*, 24 F.3d 1441, 1443-46 (D.C. Cir. 1994); *GTE Northwest, Inc. v. Public Util. Comm'n*, 900 P.2d 495, 501-07 (Or. 1995); *see also Local Competition Order*, ¶ 740 (assuming that "unbundled facilities requirements do result in a taking"); *Verizon TELRIC Comments* at 31-34.

[131] *United States v. Pewee Coal Co.*, 341 U.S. 114, 117-18 (1951) (plurality opinion) ("When a private business is possessed and operated for public use, no reason appears to justify imposition of losses sustained on the person from whom the property was seized."); *United States v. General Motors Corp.*, 323 U.S. 373, 379-83 (1945) (holding that when property is occupied by government mandate, the owner is entitled to recover his actual costs based on his particular circumstances).

[132] *Verizon TELRIC Comments* at 34; Declaration of Patrick A. Garzillo, ¶¶ 37-38 (demonstrating that TELRIC rates in Massachusetts and New York have not

In sum, the Commission must reform its TELRIC rules to reflect the current state of competition and to ensure that the pricing methodology for UNEs does not affirmatively *decrease* competition by undermining the investment incentives for all facilities-based competitors and, in particular, handicapping the ability of facilities-based wireline carriers to be vigorous competitors in the world of intermodal competition. An approach that takes into account the abundant competition in the voice telephony market and the investment incentives of market participants is the only approach to UNE pricing that will send correct economic signals to all market players and thereby remove disincentives to investment and the development of facilities-based competition.

Conclusion

For all the foregoing reasons, the Commission should eliminate the specified rules and requirements, which are "no longer necessary in the public interest."

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compensated Verizon for its actual forward-looking costs) (attached to *Verizon TELRIC Comments*).